

APPROVED 11/19/03

TOWN OF WESTFORD
ZONING BOARD OF APPEALS
MINUTES

DATE: October 15, 2003

TIME: 7:00 P.M.

PLACE: Westford Academy Lecture Hall

PRESENT: Sam Frank, Ron Johnson, Roger Hall,
Jim Kazeniac-*arrived at 7:25*, Dave Earl-*arrived at 7:34*,
Jay Enis-*arrived at 7:46*

ABSENT: Bob Herrmann

OTHERS

PRESENT: Jennifer Burke-Permitting Office Manager
Ellen Callahan Doucette-Town Counsel
Norman Khumalo-Assistant Town Manager
James Silva-Board of Selectmen-*arrived at 8:30*
Audience Members

MINUTES

It was moved by Johnson, seconded by Hall, and VOTED 3 IN FAVOR WITH 4 ABSENT (KAZENIAC, EARL, ENIS, HERRMANN) to approve the minutes of August 20, 2003, as amended.

It was moved by Johnson, seconded by Hall, and VOTED 3 IN FAVOR WITH 4 ABSENT (KAZENIAC, EARL, ENIS, HERRMANN) to approve the minutes of September 2, 2003, as submitted.

It was moved by Johnson, seconded by Hall, and VOTED 3 IN FAVOR WITH 4 ABSENT (KAZENIAC, EARL, ENIS, HERRMANN) to approve the minutes of September 17, 2003, as submitted.

It was moved by Johnson, seconded by Hall, and VOTED 3 IN FAVOR WITH 4 ABSENT (KAZENIAC, EARL, ENIS, HERRMANN) to approve the minutes of September 24, 2003, as submitted.

BOARD DISCUSSION

Future Peer Reviewers – Does the Board want to continue using the same or try different ones?

Frank reported that he spoke to Khumalo about exploring some of the other peer reviewers that have been mentioned to the Board. Burke reported that she sent information to Mike Jacobs for his assistance on the proforma review for Concord Place. Frank briefly outlined Jacobs' background.

Discuss having a second November meeting and possible dates.

The Board scheduled meetings for Wednesday, November 12th and Wednesday, November 19th.

Sam Frank to discuss Town Counsel's involvement in future 40B projects.

Frank reported on a meeting held with Khumalo and some of the Zoning Board of Appeals members relative to Town Counsel's attendance at the continued public hearings for the 40B projects. It was discussed at that meeting that Town Counsel is compelled to provide opinions without proper research and that the costs to the Town were becoming prohibitive. It was agreed at that meeting to not have Town Counsel routinely attend the 40B public hearings unless it was known that Town Counsel's presence was necessary. The Board concurred.

Rosegate Proposal by Doug Deschenes

Attorney Douglas Deschenes was present with an amended plan that he felt was consistent with the Board's recent decision. Deschenes outlined the amended plan for ten (10) units (4 3-bedroom units, 6 2-bedroom units), reduced parking, and redesign of the back of the units to limit the number of parking spaces. The number of affordable units remains at three (33 1/3% affordable). Deschenes stated that there is no lighting plan because the only lighting will be wall mounted lights on each of the units. There will be no commercial lighting on the site. New landscaping and screening plans had been previously submitted to the Board. Deschenes outlined the landscaping and screening plans. Deschenes stated that the grading, stormwater management, and erosion and control plans have not changed. Deschenes addressed the new architectural plans. Deschenes stated that the open space/recreational area will be added to the plans. Frank asked Deschenes to provide in writing a statement regarding the lighting plans and a schedule of the sizes, dimensions and square footage of each of the ten units. Johnson asked Town Counsel to

provide input relative to the process of reopening the public hearing and re-approving a new plan. Doucette stated that the sole purpose for this tonight is to see if the Board believes that if the applicant's application for a building permit for ten units in this

footprint meets the spirit of the Board's decision. Doucette recalled that the Board's technical advisor drafted the decision in such a way to make it "attractive" to Mr. Walker to build ten units at the request of the Board. Doucette stated that during deliberations there were many discussions about boosting the market rates by giving the applicant more three bedrooms. Doucette stated that the Board cannot take new information tonight. Hall stated that the Board was looking to reduce the density, specifically the amount of people who would be in this development. Hall pointed out that the applicant has made some concessions, i.e., reduced parking, screening, etc. It was the consensus of the Board that the amended plans are in compliance with the Board's decision. **It was moved by Johnson, seconded by Hall, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), that the Board feels that the ten (10) unit plan as presented by the applicant, dated 10/10/03, meets with the spirit of the Westford Zoning Board of Appeals' Comprehensive Permit decision issued on September 29, 2003.**

VARIANCE – 3 CHESAPEAKE DRIVE

Seeking a Variance from Appendix C Table of Dimensional and Density Regulations to allow the installation of a barn within the rear and side setbacks and to maintain/ replace a swimming pool within the rear yard setback in a Residential A District, Assessor's Map 66, Parcel 39, Michael and Darlene Emanouil

Attorney Gregg Haladyna was present for the applicant and asked to withdraw the petition without prejudice. **It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to allow the petitioners to withdraw the petition without prejudice.** Frank announced that if the petitioners reapply, the application fee will be waived.

137 CONCORD ROAD – COMPREHENSIVE PERMIT, CONTINUED – CONCORD PLACE, LLC

Attorney Douglas Deschenes was present for the applicant. Deschenes announced that the applicant's engineer was not present. Deschenes reported that the applicant's engineer has been working on comments provided by the Town's engineering consultant, Howe Surveying. Deschenes was in agreement with the proforma review being conducted by Mike Jacobs of Brookline, Mass. Deschenes addressed a plan showing the well locations for the abutting properties and stated that there are no wells within 100 feet of any boundary of the proposed septic system. Deschenes to provide the expanded locus map to the Board as soon as possible. Deschenes stated that the Building Inspector and Board of Health have determined that the lofts are not counted as bedrooms. Frank referenced a letter from Patricia Wagner-Montminy dated September 17, 2003 which cites Title 5 as saying that lofts do qualify as bedrooms. Frank stated that the issue of lofts vs. bedrooms will be discussed during the work sessions.

Deschenes reported that the septic designs have

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been submitted to the Board of Health. Deschenes also reported that the applicant is working with the Fire and Police Departments to verify their positions with respect to turning radii on the entrance and exit and whether Concord Road as it currently exists is adequate. Deschenes addressed the architectural plans. Deschenes referenced the report prepared by John Winslow of Winslow Architects, the Town's architectural consultant.

INPUT FROM CONSULTANTS – ARCHITECTURE – CONCORD PLACE

John Winslow, Winslow Architects, addressed his architectural review of the plans for Concord Place dated October 6, 2003.

Frank asked for a discussion during the work session to consider grading to create a space in the rear of the site. Frank asked Deschenes to provide an updated waiver list.

INPUT FROM CONSULTANTS – ENGINEERING – CONCORD PLACE

Jeff Rider, Howe Surveying Associates, outlined his report dated September 29, 2003 regarding engineering concerns and issues.

INPUT FROM THE BOARD – CONCORD PLACE

The Board discussed the issues pertaining to density on the site. Hall stated that he would not entertain a proposal with more than eight units on this less than one acre site. Hall felt that there were ways to address the overall massing of the buildings and bring the project down to eight units. Earl was concerned with the height of the buildings. Earl felt that a solution to that issue was to reduce the number of units to eight. Earl also mentioned the amount of pavement, the abutters' concerns, and wells. Deschenes pointed out that the building heights meet Westford's zoning regulations and that the applicant is not asking for waivers regarding the height. Earl felt that the buildings were not a good fit for the site. Frank stated that he would like to see more work done on eight units. Frank felt that the eight units could be a suitable topic for a working session with the proforma analyst.

CORRESPONDENCE READ INTO THE RECORD – CONCORD PLACE

Frank read the following into the record:

Comments from the Planning Board from their meeting of September 17, 2003 regarding lowering the porches on units 5, 6 and 7 to increase the privacy to adjacent properties; design features similar to those on units 8, 9 and 10 should be incorporated into this building to resemble a single family house; traffic flows need to be established to insure safety; additional visitor parking should be investigated as well as allocating specific handicap parking; provisions should be made to breakup the impact of the row of garage doors; lighting should be a balance of security and privacy; a full landscaping plan showing all plantings and well as the incorporation of stonewalls should be provided to the Planning Board; and the incorporation of sidewalks. A letter from Patricia Wagner-Montminy was read into the Planning Board's minutes.

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Letter from Patricia Wagner-Montminy, 135 Concord Road, dated September 17, 2003, asking to not grant the waivers; contamination of her well from the paving and oils on the hot top; salting, sanding, and maintenance during the winter, oil, gasoline and other motor vehicle contaminants from the parking lot; concerns with the loft being utilized as a bedroom; and the height of the buildings.

Letter from Whitney Inspection Services dated May 27, 2003 regarding the well at 135 Concord Road and how it is connected.

E-mail from Don Kinney, Building Commissioner, indicating that the roof lines meet the zoning regulations and that the lofts are not bedrooms because they do not meet the required egress according to the State Building Code.

Letter from Howe Engineering dated September 29, 2003.

Report from John Winslow, Winslow Architects, Inc., dated October 6, 2003.

Letter from Bill Turner, Conservation Administrator, dated October 8, 2003, indicating that if the wetlands lines as depicted on the plans submitted are correct, then the project is located outside the jurisdiction of the Conservation Commission. The Conservation Commission has not received any filing for determination of the accuracy of the wetland lines. Frank asked that the applicant file a determination with the Conservation Commission. Deschenes stated that he would be willing to have the wetlands flagged and do a site visit with Bill Turner to verify that the flagging is outside of the 100 foot buffer. Deschenes stated that he would prefer to flag the wetlands rather than an official filing with the Conservation Commission due to costs and time constraints. Frank concurred with Deschenes' suggestion.

New plans submitted on August 13, 2003 showing the ten units. Frank stated that the Board does not have a site utilities plan and an erosion control plan as yet. Deschenes stated that an erosion control plan is only needed when there are wetland issues. Deschenes stated that he would provide the site utilities plan as soon as they are comfortable with the number of units and location of buildings.

INPUT FROM THE AUDIENCE – CONCORD PLACE

Al Hicks, 130 Concord Road, stated that he was pleased that the engineering consultant came up with many of the same things that the neighbors were concerned about. Hicks asked Deschenes if the applicant has met with the Police and Fire Departments. Deschenes stated that he did not believe that the applicant has met with those departments as yet.

Gordon Stevenson, 134 Concord Road, stated that the letter from Mass Housing Starts says that all income derived by the owners of the LLC must describe all income received in relationship to the project as income received by the LLC.

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Stevenson wanted to be sure that the items that would be considered as income of the LLC be correct in the proforma calculations. Stevenson was concerned with the disparity between the criteria of Title 5 and the State Building Code relative to the loft vs. bedroom issue. Stevenson suggested that the Title 5 definitions should be utilized in determining the size of the leach fields which would be three bedrooms per unit.

MOTION TO CONTINUE THE PUBLIC HEARING – CONCORD PLACE

It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to continue the public hearing for Concord Place to November 12, 2003 at 7:30 p.m.

COMPREHENSIVE PERMIT – 211 GROTON ROAD – KEYES CORNER CONDOMINIUMS

It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to open the public hearing.

Attorney Douglas Deschenes was present representing the applicant seeking a Comprehensive Permit pursuant to M.G.L. Chapter 40B, Local Initiative Program (LIP). Deschenes outlined the Local Initiative Program and the partnership with the Westford Board of Selectmen. Deschenes stated that after meeting with the Town Boards and departments the applicant agreed to reduce the project from 45 units down to 36 units. A site approval letter was received from the Department of Housing and Community Development (DHCD).

Deschenes presented the plans for a 36 unit project on the site of the Rancho De Amigo's Restaurant at the corner of Groton Road and Nutting Road. The house and restaurant on the site would be razed to make room for the project. Deschenes showed a plan of the existing site conditions. Deschenes pointed out the location of the wetlands (totaling 1½ acres of resource areas leaving 3.75 upland acres). The project is proposed with thirty-six (36) townhouse style condominium units in seven (7) separate buildings. All units will contain 1,530 sq. ft. of living space, with 2 bedrooms and 1½ bathrooms. Each unit will be assigned two (2) parking spaces (one of which is a garage; seven (7) visitor parking spaces are shown in the central location of the project for a total of seventy-nine (79) spaces which is in conformance with the zoning bylaw. Deschenes outlined the proposed architecture of the buildings. Deschenes stated that the Board of Selectmen, after consultation with the Fire and Police Departments, wanted to eliminate the multiple access situation of the site. Deschenes stated that the plans propose a single main access to the project onto Nutting Road. Deschenes pointed out a 25 ft. gravel emergency access (gated). Deschenes stated that the applicant will be looking at the distance of the access to the intersection of Nutting and Groton Roads and whether the siting is correct. Deschenes stated that the buildings will be sprinkled (fire suppression). Deschenes stated that they are waiting to hear from the Fire Department regarding the issue of the turning radii. The applicant is

proposing to connect to town water. Deschenes stated that the buildings will comply with all building codes and at a minimum the buildings will comply with the Title 5 requirements for the septic system. Deschenes pointed out location of the proposed septic system (outside of the 100 ft. buffer and the riparian zone). Deschenes stated that a small portion of a building and some grading associated will be within the outer riparian zone (within 200 ft. of the brook). This will require a filing with the Conservation Commission, however, the applicant will not be seeking any waivers from the local or state wetlands regulations. Deschenes stated that the applicant has submitted a full 21E Study with the State pursuant to the request of DHCD. Deschenes proposed starting construction within 2-3 months of final permitting. Deschenes estimated that the project would take 1-2 years to build out. Deschenes stated that a homeowners association would be responsible for running the condominium, i.e., the maintenance of the roadways and parking, snow plowing of the parking lots, landscaping, and external maintenance of the buildings, etc. Deschenes outlined the five (5) waivers requested for this project. Deschenes stated that nine (9) units will be affordable. DHCD has provided that six (6) of the nine (9) affordable units could be reserved for Westford applicants.

REVIEW TOWN DEPARTMENT COMMENTS – KEYES CORNER CONDOMINIUMS

Frank referenced the Partnership Agreement between the Board of Selectmen and the Keyes Corner Condominium, LLC and the 21E Study as required by the State.

Letter from Bill Turner, Conservation Administrator, dated September 19, 2003, noting the Conservation Commission has not confirmed the wetland boundaries and the mean annual high water line which determines the location of the riverfront area.

Letter from Elaine Major, Environmental Analyst, Westford Water Department, dated September 22, 2003, relative to the landscape maintenance and management after the site has been developed and housing units constructed.

Memorandum from Donald Parsons, Fire Prevention Officer, dated September 26, 2003, stating one entrance into the site is not acceptable to the Fire Department as fire apparatus will not be able to negotiate the turning radiuses as well as appropriate fire apparatus placement during an emergency. Parsons requested a secondary yard hydrant in the area of the entrance off Nutting Road. Fire suppression systems will be required for the proposed condominiums as well as fire protective monitoring systems.

Letter from James Arsenault, Town Engineer, dated October 6, 2003, outlining his concerns regarding the proposed development.

Letter from Darren MacCaughey, Interim Director of Environmental Services, dated October 8, 2003, indicating the Board of Health review tonight.

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Letter from James Arsenault, Town Engineer, dated October 9, 2003, in response to his review of the “Supplemental Data Report with Notice of Intent, Keyes Corner Condominium, Westford, MA”.

Letter from Tim Greenhill, Town Planner, dated October 9, 2003, regarding his review of the plans. Greenhill’s letter outlined concerns regarding zoning, site layout and waivers.

Letter from Diane Lauber Doherty, 15 Tenney Road, dated October 13, 2003, outlining concerns with the proposed development.

BOARD QUESTIONS/COMMENTS

Hall felt that one of the key issues with the project is traffic. Hall stated that Route 40 has become a very busy road. Hall suggested a one-way loop into the project from Route 40 and out Nutting Road. Hall pointed out that there are a number of intersections at that site and there is heavy traffic in the morning because of Dunkin’ Donuts, the gas station and the convenience store. Hall estimated a minimum of 72 cars that could be leaving and entering the project all at one time. Hall stated that he would be interested to see what type of traffic studies will be done and the recommendations from those studies.

Kazeniac was concerned with the density of the project. Johnson was also concerned with traffic and density.

Earl was questioned the role of the ZBA and the Selectmen. Earl also felt that traffic was the Selectmen's domain. Khumalo stated that the review by the Selectmen was not designed to address the Comprehensive Permit issues but rather to build a certain level of comfort among the Selectmen and the town boards as to whether the Selectmen could co-sign as applicants to this project. Khumalo stated that in terms of traffic discussions with the applicant have focused on collecting baseline data. This does not preclude the ZBA requiring any further studies. Frank read a portion of the LIP Agreement as follows: *If a permit is denied by the Zoning Board of Appeals the Selectmen and the LLC shall confer on what if any future action shall be taken. The Selectmen shall have the right to withdraw from the project at this time. If the requisite permit as applied for does issue in substantial conformance with the terms of the application originally submitted by the LLC and the Selectmen, then the project shall proceed in accordance with the approval.* Earl felt that the agreement sets the tone for the proposal that is before the ZBA. Earl stated that the Selectmen have not dealt with the issues of traffic or the 36 units. Enis asked procedurally how the ZBA could get the opinions of the various boards that the developer has gone to for those opinions. Enis stated that it sounds like a lot of work has been done and the ZBA should recognize what the developer has done. Frank agreed that a history of the work to date should be provided. Deschenes outlined the LIP process. Khumalo referenced the LIP protocol. Khumalo stated that it was the intention of the Selectmen and the Affordable Housing Committee to get the Zoning Board's input when the protocol was developed.

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INPUT FROM THE PUBLIC – KEYES CORNER CONDOMINIUMS

Elizabeth Hartofelis, 87 Nutting Road, stated that the sense she got at the Selectmen's meeting was that the Selectmen assumed that they had to keep approving everything or it would move directly to Mass Housing and Chapter 40B. Hartofelis stated that the neighbors were told by the Selectmen that the Zoning Board was the official public hearing and that an ultimate decision would be made by the Zoning Board but if they did not keep their approval process going on all these things that were addressed to them, everything would end there and the applicant would go for a 40B. Hartofelis summarized her letter dated October 13, 2003 regarding traffic and density concerns.

Nancy Maddox, 207 Groton Road, summarized her letter dated September 29, 2003, regarding grading and height of the buildings.

Anne Dempsey, 208 Groton Road, summarized her letter dated October 6, 2003, regarding the height of the buildings and density of the development, the septic system, and traffic concerns.

Sheila Grimm, 98 Nutting Road, asked for clarification of the garage locations. Frank stated that the garages are in the rear. Grimm stated that the decks on the second floor would be looking into her son's bedroom.

Kevin Kearns, 208 Groton Road, stated that there is a lot of bus, construction and commercial vehicles, police, etc., parking along the roadway to go to Dunkin' Donuts and the mall. Kearns asked what will happen with all the extra traffic on Route 40. Kearns stated that he attended the Board of Health meeting earlier and that the Board of Health did not have any specifics relative to the plans. Khumalo stated that he would talk to the owner of the commercial property relative to parking. Khumalo stated that he has asked the Town Planner and the Town Engineer to confirm statements that have been

made with regard to traffic improvements proposed for the intersection as part of the approval process for the Stony Brook School.

Virginia Burke, 78 Nutting Road, stated that there are four new recreational fields at the Stony Brook School and when those fields are in use there is a backup of traffic on Nutting Road and Route 40, as well as all the buses. Burke felt that the density and safety of those people are issues as well. Burke stated that Deschenes made reference to all the amenities around the project. Burke asked how people will get to the amenities safely. Burke noted that the Board made reference to the other 40B project stating that 10 units was too dense and that 8 units was better. Burke stated that this project is 36 units on 3.75 acres of land which figures out to 10 units per acre. Burke stated that the project does not fit in with the neighborhood.

Ken Grimm, 92 Nutting Road, stated that he has lived at this address for 46 years and gave his son some land several years ago on which he build his home (next to Ranchos De Amigo's Restaurant). Grimm stated that 20 years ago the zoning across Route 40 changed to 1/2 an acre to build a house. Grimm stated that on the other side of Route 40 an acre of land was needed to build a house. Grimm stated that 3 or 4 years ago, the Town wanted only 30 permits to build a house in order to slow down building. Grimm stated that the Town has 4 new schools. Grimm asked why the Town is allowing the State to push these types of projects on the Town which will bring more children and the need for more schools.

Craig Grimm, 98 Nutting Road, showed a video of his property, the surrounding area, the intersection and the Ranchos De Amigo's Restaurant site.

Lorraine McElroy, 68 Nutting Road, stated that she was past member of the Housing Authority when Westford was one of the first towns to get funding for elderly and family housing. McElroy stated that Keyes Pond is one of the major aquifers for the town. McElroy stated that the stream at the rear of the property no longer flows due to beaver activity. McElroy was concerned with drainage and the impacts to the stream.

Fred Reslow, applicant, stated that they were not trying to bypass the Zoning Board by going with a LIP proposal. Reslow felt that the Selectmen and Affordable Housing Committee were wise to try to put together the protocol to have some control over the development.

DISCUSS PEER REVIEW & ESCROW ACCOUNT (\$10,000)

Deschenes stated that the applicant will agree to whatever reasonable escrow account the Town would like to set up and will agree to the suggested proforma analyst (Mike Jacobs). Deschenes also suggested continued use of Howe Surveying for the Town's peer review. Earl asked to discuss traffic before making any decisions regarding peer review and an escrow account. Deschenes stated that traffic could be discussed at the next meeting but engineering and the proforma are standard reviews and that the Town

has people in place. Earl stated that traffic and density are related. Khumalo stated that the agreement signed between the Selectmen and the applicant indicates the need for a traffic review. Khumalo suggested giving the baseline traffic data to the Town Engineer for his review and based upon his review draw up a scope of services for the traffic study.

MOTION TO CONTINUE THE PUBLIC HEARING

It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to continue the public hearing to November 12, 2003 at 7:30 p.m.

ADJOURNMENT

It was moved by Johnson, seconded by Earl, and VOTED UNANIMOUSLY, to adjourn the meeting at 11:00 p.m.